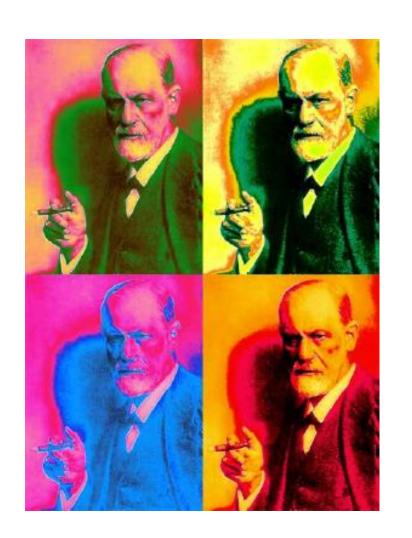
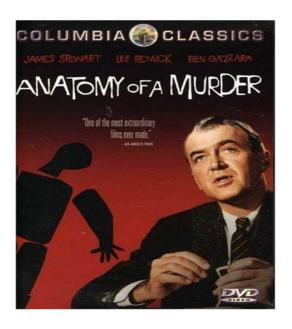
MAGICAL MYSTERY TOUR

- Mental Defenses
- October 2016
- Creighton Horton
- Former Utah Prosecutor





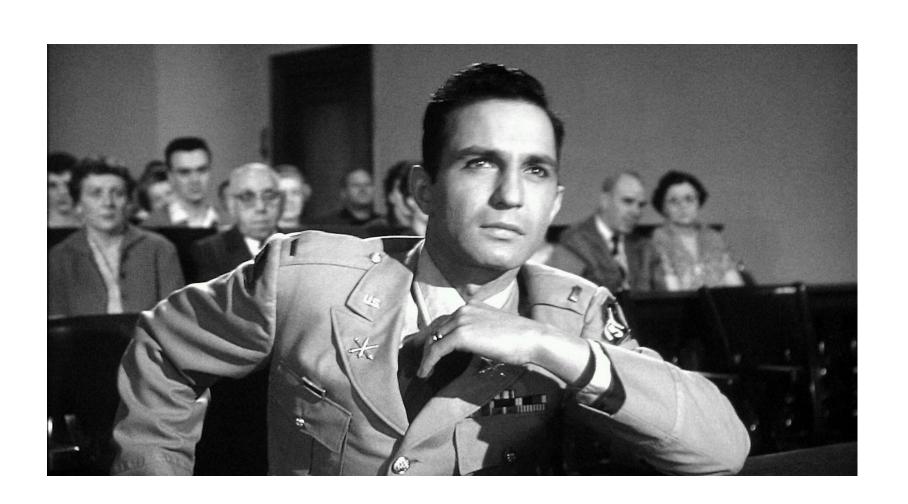


- Let's play "Beat the Rap"
- You gunned down Barney Quill in a bar in front of several witnesses
- You've been charged with murder
- You know you did it
- How can you win this game?

Possible Winning Strategies

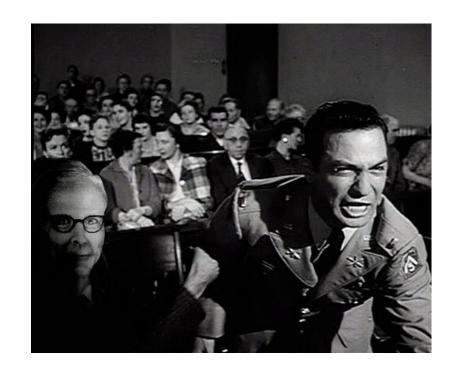


- You can't be tried because you're incompetent to stand trial
- OR
- You must have been nuts!



Let's explore the nuts option

An uphill battle for the defense, because Utah's mental defense laws are more favorable to the prosecution than in most other states



What Utah's insanity law used to be pre-1983:

- "A person is not responsible for his criminal conduct if at the time of such conduct as a result of mental disease or defect he lacked substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law."
- Was most common standard Model Penal Code
- Was swept away by the Legislature, due to highprofile event . . .

The Attempted Assassination of President Reagan in 1981



American Psychiatric Association Statement on the Insanity Defense, 1982

- APA did not oppose doing away with the "volitional prong" of the insanity defense, which was . . .
- The "irresistible impulse" defense



Excerpt from APA statement:

- "... the difference between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk."
- What are the implications of that statement?
- The existence of irresistible impulse can't be reliably proven or disproven by psychiatric methods, and therefore . . .
- Mental health practitioners shouldn't be put in the position of offering expert opinion testimony on that issue
- Yet they had been doing so for decades

Insanity Reform Act of 1983 UCA 76-2-305

- "It is a defense to a prosecution . . . that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged."
- New law abolished "right-wrong" standard and "irresistible impulse" defense.
- Statute often referred to as "mens rea" statute
- Did not "abolish" insanity defense but severely curtailed it.
- Not guilty by reason of insanity verdicts still possible (but don't hold your breath).

Aside: Did any part of Utah's traditional insanity defense survive?

- Yes, as a mitigating circumstance for capital sentencing:
- "at the time of the homicide, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired as a result of mental illness . . ." 76-3-207 (4)(d)

Definition of "mental illness"

- "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, intellectual disability.
- "Mental illness" does not mean an abnormality manifested primarily by repeated criminal conduct.
- Intellectual disability" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to age 22.

"Mens rea statue" also provides:

- "The defense defined in this section includes the defenses known as 'insanity' and 'diminished mental capacity."
- "Mental illness is not otherwise a defense, . . . "
- A person who asserts a defense of insanity or diminished mental capacity, and who is under the influence of voluntarily consumed, injected or ingested alcohol, controlled substances or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of mental illness if the alcohol or substances caused, triggered, or substantially contributed to the mental illness."

Case example of what it means that "mental illness is not otherwise a defense"

State v. Joseph C. Gardner, Jr., 870 P.3d 900 (1993)

Facts

Holding

So be aware that one running an "involuntary intoxication" defense in Utah must do so within the mens rea mental defense statute.

Practical application of the statute

- Let's say a mentally ill defendant is charged with murder on the theory that he "intentionally or knowingly" caused the death of another.
- No matter how "crazy" his mental processes or motivation might have been, if the defendant intended to kill the victim or knew he was killing the victim, a human being, the defendant is guilty of murder (unless special mitigation applies)

It is <u>not</u> a defense that, because of mental illness, the defendant:

- Didn't appreciate the wrongfulness of his actions;
- Couldn't control himself;
- Intended to kill someone else;
- Believed that God urged or commanded him to do it;
- Did not premeditate or deliberate the murder, or act with malice aforethought; or
- Wouldn't have committed the murder but for the mental illness.

It is also not a defense that the defendant ". . . suffered from Post-traumatic Stress Disorder, with pronounced features of a Schizotypal Personality Disorder, etc., etc." (insert your diagnosis here)

- The labels don't control, so don't be intimidated by them
- It's a functional analysis -- did the defendant intend to kill or know he/she was killing the victim?

On the other hand . . .

- If the defendant did not intend to kill or know he was killing a human being, AND
- The reason he did not intend to kill or know he was killing a human being was because he had a mental illness, then, and only then . .
- would he qualify for a finding "not guilty by reason of insanity"

So it's not enough to be floridly mentally ill

- You have to have the "right" delusion, such as:
- You think you're squeezing a grapefruit rather than strangling a person;
 OR
- You think the person you're killing is a robot, a space alien, or some other non-human entity.
- The problem for most mentally ill defendants is that this isn't their delusion they know they're killing a person but do so for a variety of "crazy" reasons, which do not provide them with a defense in Utah.

Where does "diminished mental capacity" fit in?

- Concept of diminished mental capacity is often elusive in application, because . . .
- The term is not always used to describe the same thing - sometimes it's used to refer to criminal responsibility issues, sometimes sentencing issues.
- Its definition has changed over the years.
- Historically, neither statutory provisions nor case law in Utah has clearly delineated what it is and what it is not.

So what is diminished mental capacity?

- In 1982, the Utah Supreme Court addressed the issue in *State v. Sessions*, a forcible sexual abuse case in which the defendant alleged that when he committed the crime, he did so with diminished mental capacity.
- Facts in Sessions case

State v. Sessions, 645 P.2d 643 (Utah 1982)

- "The defense of diminished capacity . . .is defined as a mental disease or defect, not amounting to legal insanity, that impairs a defendant's ability to form the specific intent necessary to prove certain crimes."
- "... diminished mental capacity may negate the existence of a particular intent, but when it does, a defendant is not usually thereby absolved from all criminal liability."

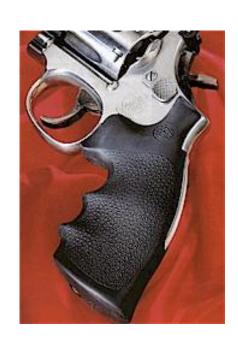
Diminished Mental Capacity

- Concept applies in theory whenever, due to mental illness, defendant does not act with the intent necessary to be convicted of the charged offense, but
- The defendant does act with the intent required to be convicted of a lower degree of offense.

Sessions case example

- Forcible sexual abuse (felony under 76-5-404) requires "intent to . . .arouse or gratify the sexual desire of any person"
- Lewdness (misdemeanor under 76-9-702) requires only that one perform a lewd act "under circumstances which the person should know will likely cause affront or alarm to . . .another"

What about diminished capacity in homicide cases - how does it apply?



 We'll get to that, but first let's go back to Utah's "mens rea" mental defense statute

Could the Legislature really abolish such a wellestablished defense as insanity?

- U.S. Supreme Court has never said insanity defense is constitutionally required
- Court has expressly held irresistible impulse is not required



The Utah Supreme Court's opinion in State v. Herrera, 895 P.2d 359 Utah (1995)



Cambria County Courts 200 South Center Street Ebensburg, PA 15931.



Challenge to Utah's Mens Rea Statute

- Bound to happen such a major departure from the past
- Utah one of the few states that took such drastic action in the wake of the attempted assassination of President Reagan.

Upshot of Opinion

- Utah Supreme Court upheld
 Utah's "mens rea" statute in 3 to
 2 decision
- Scathing dissents by Justices Stewart and Durham
- Victory for State or wake-up call?



The Legislature Reacts (1999)

- Effort was spearheaded by prosecutors
- Concern was that defense was overly restrictive
- Result was new partial defense of "special mitigation"



What is Special Mitigation?

- It analyzes as a variation of diminished capacity, applicable only to murder and aggravated murder cases – 76-5-205.5 (enacted in 1999).
- It's a very limited partial defense, which reduces the level of the defendant's culpability by one degree.
- For example, if the defense is successful, an aggravated murder would be reduced to a murder, a murder to a manslaughter.

What establishes it?

Defendant must have been mentally ill at time of killing, and suffering from a delusion which, if the facts existed as he believed them to be, would have legally justified his use of deadly force.

Generally difficult for a defendant to establish because:

- Not just any delusion will do the defendant has to be suffering from the "right delusion."
- The law requires that his actions, in light of his delusion, "were reasonable from the objective viewpoint of a reasonable person," and . .
- He has the burden to establish the partial defense by a preponderance of the evidence.

Example of a case that looked like it might qualify under the special mitigation statute

- Defendant killed a
 County road grader in
 1998 charged with
 Aggravated Murder
- Had been in gulf war
- Had been diagnosed with PTSD
- Was a former postal worker
- Was acting like he was on military maneuvers in desert

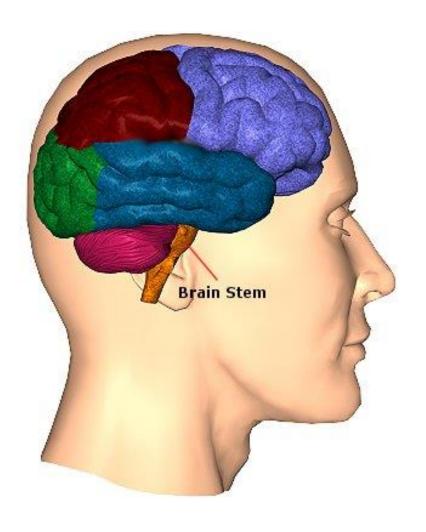


It looked like the defense might apply

- Defense counsel was excited when he learned about the new law
- Some opined the defendant must have thought he was back in the war, and the victim was an enemy soldier.
- He may have thought the road grader was a tank.



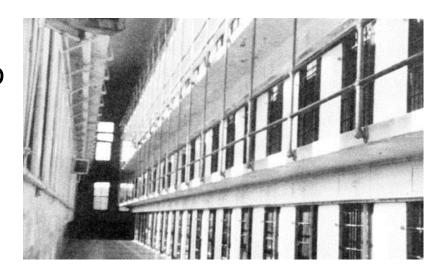
But there was a problem



- Although all agreed he was mentally ill at the time . . .
- That was not his delusion.
- His delusion was that the victim was an infidel, and Allah wanted him killed.

End result

- Special mitigation did not apply to reduce level of offense down to murder, so
- Defendant went to prison for aggravated murder



Standards of Proof and Burdens of Proof for Mental Defenses

- There are differences in standards of proof and burdens of proof for various mental defenses in Utah
- For most defenses, the defendant need only raise the issue with some evidence, and the State must rebut it beyond a reasonable doubt
- For special mitigation, however, the defendant must establish it by a preponderance of the evidence

Why the difference?

- For defenses to murder under the "mens rea statute," intent is an element of the offense, so burden of persuasion cannot be allocated to defendant and state must establish intent element beyond a reasonable doubt
- For special mitigation, however, defendant can be allocated burden of persuasion because it does not negate an element of the offense of murder (in true affirmative defense fashion)

What about a plea or verdict of "guilty with a mental illness at the time of the offense?" (77-16a-101 et seq) (GWMI)

- Is "guilty with a mental illness at the time of the offense" a mental defense?
- No, it's first and foremost a finding of guilt
- It does not mitigate culpability under the law, and it may or may not result in different sentencing
- Because of that, it has been criticized by some as providing an illusory benefit to mentally ill defendants



More GWMI Facts

- Enacted in 1983 when strict "mens rea" mental defense statute was passed.
- Intended to ameliorate some of the harsher consequences of the new law.
- Originally referred to as "guilty and mentally ill" (GAMI)
- Relevant time period for GAMI verdict has changed over the years. Statute is now clear – time of offense, not trial.

2 Types of GWMI evaluations

- Pre-trial -- to determine if defendant qualifies for "GWMI at the time of the offense" verdict (generally conducted in conjunction with mental defense evals).
- Post-trial -- after defendant pleads or is found "GWMI" – to determine if defendant is presently mentally ill and hence may qualify for different sentencing options.

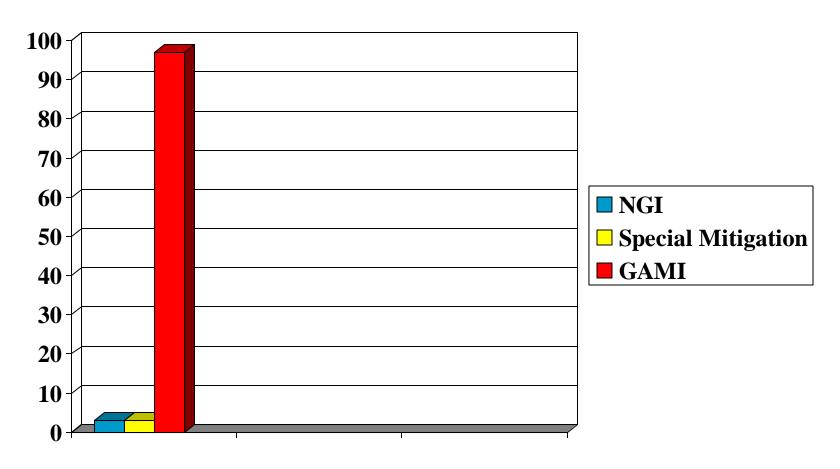
In summary . . .

- Utah's mental defense statutes make it very difficult for a mentally ill defendant to be found NGI, or qualify for diminished capacity.
- A few more defendants may qualify in murder cases under the special mitigation statute.
- While most defendants who were mentally ill at the time of the offense will not qualify for defenses under Utah's statutes . . .
- Most will qualify for GWMI.

Why?

- The definition of "mental illness" is broad.
- For GWMI verdict, no causal link is required between the defendant's mental illness and the crime he/she is alleged to have committed.
- Mental illness need not have played any part in what the defendant did.
- The inquiry ends with whether the defendant was mentally ill at the time of the offense.

Estimated percentages of defendants who were mentally ill when they committed their crimes who qualify under Utah law for . . .



Practice pointer

- How concerned should prosecutors be about a plea of "guilty while mentally ill at the time of the offense"?
- My view is that there's very little downside, so if a defendant is willing to plead GWMI at a level you'd be comfortable having a guilty plea entered, I'd go for it.
- By allowing the plea, you need not endorse the defendant's claim of mental illness (if you disagree with it), and
- The plea just triggers a pre-sentencing evaluation of whether the defendant is currently mentally ill and potentially qualifies for expanded sentencing options



On to cross-examining defense experts (tomorrow)

